

The Right Honourable Henry Earl of Bindon, Son and Heir Apparent of the Right Honourable Henry Earl of Suffolk: The Honourable Edward Howard, and Charles Howard, Esqs; Two other Sons of the Earl of Suffolk. John Pitt, Esq; and the Lady Diana his Wife, Daughter to the said Earl.

Apellants.

The Right Honourable Henry Earl of Suffolk; the Right Honourable Anne, Countess Dowager of Suffolk, Surviving Executors of James, late Earl of Suffolk, Deceased, Sir William Russel, Bar. Thomas Marriot, Esq; Susannah Coppinger, Spinster, Executrix of Mary Coppinger, Widow, Deceased, who was Administratrix of Ralph Coppinger, Deceased, John Davies and Margaret his Wife.

Respondents.

The CASE of the Respondents, John Davies, Gent. and Margaret his Wife.

Upon a Decree of the High-Court of CHANCERY.

19 October 21 Car. 2.
21 Mar. 22 Car. 2.

10 July 1688
Earl James's Will.

1688.

Earl George Died
Intestate.

6 November 1701.

21 November 13 Gul

K. William's Grant.

The Trusts.

22 January 1706.

Bill in Chancery
brought.

31 January 1701.

2 and 3 February

1701.

Defendants Answer
Davies's Defence.

47 June 1707,
Decree in Chancery

JAMES late Earl of Suffolk, by Deed and Fine, Sold and Convey'd to King Charles the Second Audley-End House, Park and Lands for 50000 l. of which the King Paid only 30000 l. and after Order'd the other 20000 l. to be Paid out of the Revenue of the Hearth Money.

The said Earl James, by his Will (reciting That the said 20000 l. was then unpaid) Gave and Devised the same in the Words following, viz. *I do hereby Give and Devise the said 20000 l. unto my Brothers, George Howard and Henry Howard, and unto Henry Howard, Edward Howard, Charles Howard, and Diana Howard, Sons and Daughter of my said Brother Henry Howard, equally to be Divided amongst them, Share and Share alike; and if either of them Die, to the Survivors, or Survivor of them;* and made the Respondents, Anne, Countess Dowager of Suffolk, his Wife, and Henry Earl of Suffolk, his Brother, and also Richard Newman, Esq; since Deceased, Executors; and after his Death, and before any part of the said 20000 l. was Paid, the said Revenue of Hearth Money was taken away by Act of Parliament.

The said George Howard surviv'd his said Brother, Earl James, about three Years, and succeeded him in his Honour, and afterwards Died Intestate before the said 20000 l. was received; leaving Anne, Countess of Suffolk, his Third Wife, and Two Daughters by his First Wife, and the Wife of the Respondent John Davies, and another Daughter by Elizabeth, his Second Wife; and Administration of Earl George's Estate, having been Granted to Mary Coppinger, Widow, Administratrix of Ralph Coppinger, Deceased, as Principal Creditor of the said Earl George, the same was revoked and Granted to the Respondent, Margaret Davies, one of the Daughters of the said Earl George.

King William afterwards, in Consideration of a Release from the said Surviving Executors of Earl James, of the said 20000 l. did (at the Nomination of the Respondent Henry Earl of Suffolk, and of the Appellants, Henry Earl of Bindon, Edward Howard, Charles Howard, John Pitt, and the Lady Diana his Wife) Grant to Peter King, and Thomas Marriot, Esqs; and their Heirs, the said Audley-End House, Park, and Lands, upon the Trusts following, viz. In the first place, For the saving harmless the said Surviving Executors of the said Earl James against all Claimes and Demands of the Administrators, or other Representatives of the said Earl George, for or in respect of the said 20000 l. or any part thereof, and for making satisfaction to such Administrators, or other Representatives of the said Earl George, in case they should appear to have Right to any part of the said 20000 l. and subject thereto; and as to one Fifth Part of the Premisses in Trust for the Respondent, Earl Henry and his Heirs; as to another Fifth Part in Trust for the Appellant, the Earl of Bindon and his Heirs; As to another Fifth Part in Trust for the Appellant, Edward Howard and his Heirs; as to another Fifth Part in Trust for the Appellant, Charles Howard and his Heirs; and as to the remaining Fifth Part in Trust for the the Appellant, the said Lady Diana, the Wife of the said John Pitt, and her Heirs for ever.

The Appellants brought their Bill in Chancery against the Respondents, and the Administratrix of Ralph Coppinger Suggesting the said Matters, and that the said Mr. King and Mr. Marriot, in Pursuance of a Decree of the Court of Chancery, had, by Indentures of Lease and Release, Convey'd the Premisses unto the Respondent, Sir William Russel, and his Heirs and Assigns, to the use of the said Sir William and the Respondent Marriot, their Heirs and Assigns, for ever, upon the Trusts aforesaid; and that the said Appellant, Earl of Bindon, had agreed with the other Appellants and the Respondent, Earl Henry, for the Purchase of their several Fifth Parts of the Premises; and thereby pray'd, that the said Trustees might Convey the Premisses to the said Earl of Bindon, and that the same might be quieted from the Claim of the Representatives of the said Earl George: To which the Respondents put in their several Answers, admitting the Matters aforesaid; and the said Respondents, John Davies and his Wife, insisted, *That the said Earl George surviving Earl James, became Intituled to one Sixth Part of the said 20000 l. and that the Clause of Survivorship was only to prevent the share of any Legatee that might Die in the Life-time of Earl James, from falling into his general Estate, and to those who were never intended to have any part thereof:* And the said Susannah Coppinger, by her Answer, insisted, *That the said Earl George's Part was subject to Pay 500 l. and Interest thereof Owing to Ralph Coppinger.*

The Cause coming on to be heard before the Lord Chancellor of Great Britain, after long Debate by Council for all Parties, the said Lord Chancellor was of Opinion, *That the said Devise took place in point of Interest immediately on the Death of Earl James, (Earl George him surviving) and that the Respondents, Davies and his Wife (Administratrix of Earl George) are well Intituled to a Sixth Part of the said 20000 l. subject to the said Coppinger's Demands.* And therefore Order'd and Decreed Interest to be computed for the said Sixth Part from the time the Appellant, Earl of Bindon had Possession And upon the Earl of Bindon's Paying to the said Respondents, Davies and his Wife, one Sixth Part of the said 20000 l. with Interest as aforesaid. It is Order'd and Decreed, *That the several Defendants do execute unto the Earl of Bindon a Conveyance of the Premisses:* But in Default of such Payment, it is Order'd, *That the Plaintiff's Bill do stand Dismissed, with Costs to be Taxed;* which Decree is most Humbly conceived to be Just.

Wherefore the Respondent, John Davies, and his Wife, Humbly Pray,
That the said Appeal may be Dismissed with Costs.

G. Paunceforte.